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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
Organizational session
New York, 19-23 April 1993
Agenda item 6*

ORGANIZATION OF WORK

List of issues

(Submitted by the delegation of Peru)

1. Identification of straddling fish stocks and highly migratory fish stocks whose fishing may require review by the Conference.

2. Identification of the principal ocean areas in which such species exist.

3. Definition of the general obligations of States in the light of the provisions of the United Nations Convention on the Law of the Sea and other relevant instruments.

4. Scope of cooperation and functions of the competent international organizations at the global, regional and subregional levels.

5. Collection of scientific, technological and statistical data on resources, environmental factors, fishing fleets, fishing methods, intensity of fishing activity, transshipment operations, marketing of fishery products and other related topics.

6. Scientific research and technology transfers.

7. Measures for the conservation and sound management of resources (maximum catch allowable, optimum sustainable yield, quotas, open and closed fishing seasons, minimum sizes, fishing techniques and equipment, conservation of the marine environment, incidental catch, declaration of overfishing, etc.).

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* A/CONF.164/1.

8. Registration of fishing vessels.

9. Flagging of fishing vessels.

10. Registration of fishing activity on a regional or subregional basis.

11. Monitoring and verification systems (maritime, land, air, satellite, on-board observers and inspections, etc.).

12. Assistance to developing countries.

13. Implementation procedures.

14. Sanctions.

15. States other than States parties.

16. Settlement of disputes.

17. Other matters (e.g. access of States that have not previously fished the high seas).

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

LETTER DATED 25 MAY 1993 FROM THE DEPUTY CHAIRMAN OF THE COMMITTEE OF THE RUSSIAN FEDERATION ON FISHERIES ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

In accordance with the understanding reached at the organizational session in April 1993, please find attached a list of issues for discussion at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which I submit as an official document of the Russian delegation relating to the organization of the forthcoming session in July 1993.

I should also like to draw your attention to the suggestion I made in my statement in New York in April 1993, namely, that the working groups should be set up on the following issues:

1. Standards for the conservation of straddling stocks and on the conservation and optimum utilization of highly migratory stocks;

2. Ways of improving cooperation so as to ensure the implementation of measures for the conservation of straddling stocks and the conservation and optimum utilization of highly migratory stocks in the high seas;

3. The preparation of final documents, which should be legally consistent with the 1982 United Nations Convention on the Law of the Sea.

At the same time, the Russian delegation is prepared to give serious consideration to proposals by other delegations on this issue and is open to the adoption of balanced decisions.

(Signed) V. K. ZILANOV
Deputy Chairman
Committee of the Russian
Federation on Fisheries

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Annex

ORGANIZATION OF WORK

List of issues

(Submitted by the delegation of the Russian Federation)

1. The identification and study of existing problems related to the conservation of straddling fish stocks in areas of the high seas adjacent to the 200-mile economic zones, and the identification and study of existing problems related to the conservation and optimum utilization of highly migratory stocks in open areas of the world's oceans.

2. International minimum standards for the conservation, optimum utilization and monitoring of the condition of straddling fish stocks and highly migratory fish stocks, as well as for monitoring the fishing of these stocks on the high seas.

3. The identification of specific aspects of the rights and obligations of coastal States and States engaged in the high seas fishing of straddling stocks and highly migratory stocks, pursuant to the 1982 United Nations Convention on the Law of the Sea.

4. The liability of States which abuse their rights with regard to the fishing of straddling stocks and highly migratory stocks in open areas of the world's oceans.

5. The identification and study of the existing problem relating to the harmonization of measures to conserve straddling fish stocks in open areas of the world's oceans adjacent to the 200-mile zones, between coastal States and States engaged in fishing operations in the adjacent areas.

5.1 The definition of straddling stocks of various species, on the basis of their specific biological features, as well as the provisions of the 1982 United Nations Convention on the Law of the Sea.

5.2 The definition of the area adjacent to the 200-mile economic zones in which straddling stocks of various species may be fished.

5.3 Statistical information on the fishing of straddling stocks in the various adjacent areas of the world's oceans over the previous 15 years (giving gross annual catches, including those in the economic zones and in the adjacent areas, the established quotas and the basis for their selection).

5.4 Determination of the rights and obligations of coastal States and States engaged in the fishing of straddling stocks in the adjacent area of the high seas, in accordance with the 1982 United Nations Convention on the Law of the Sea, and the existing practice for their application and implementation.

5.5 The principles, methods and practice followed by interregional and regional international organizations for the conservation of straddling fish stocks of the adjacent areas of the high seas.

5.6 The verification and monitoring of fishing operations, measures to enforce the regulations on the fishing of straddling stocks in the adjacent areas, and possible ways of improving those procedures.

5.7 Specific aspects of the conservation of straddling stocks in the enclosed and semi-enclosed inland seas.

6. The identification and study of existing problems related to the conservation and optimum utilization of highly migratory stocks in the high seas.

6.1 The existing practice of inter-State cooperation within international organizations for the conservation and optimum utilization of highly migratory stocks, and possible improvements to that cooperation.

6.2 The full range of special needs of the developing countries and arrangements for meeting those needs where the high seas fishing of highly migratory stocks is concerned.

6.3 The verification and monitoring of fishing operations, measures to enforce the regulations on the high seas fishing of highly migratory stocks, and possible ways of improving those procedures.

6.4 The effectiveness of the application of the provisions of the 1982 United Nations Convention on the Law of the Sea, with a view to ensuring the conservation and optimum utilization of highly migratory stocks in the high seas.

7. The problem of flags of convenience in relation to the conservation of straddling stocks and the conservation and optimum utilization of highly migratory stocks in the high seas.

8. The enforcement of the regulations for the conservation of straddling fish stocks and highly migratory fish stocks.

9. Aspects of the settlement of disputes relating to the conservation of straddling fish stocks and highly migratory fish stocks in the high seas.

10. The preparation of the proposed final documents of the Conference.

10.1 A declaration of principles for the conservation of migratory stocks in high seas areas adjacent to the 200-mile economic zones.

10.2 A declaration of principles for the conservation of straddling stocks in enclosed and semi-enclosed seas.

10.3 A declaration of principles for the conservation and optimum utilization of highly migratory stocks in the high seas.

10.4 A declaration on the problem of flags of convenience.

10.5 A programme of practical activities for the conservation of straddling stocks in high seas areas adjacent to the 200-mile zones.

10.6 A programme of practical activities for the conservation and optimum utilization of highly migratory stocks in the high seas.

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

LETTER DATED 25 MAY 1993 FROM THE DEPUTY CHAIRMAN OF THE COMMITTEE OF THE RUSSIAN FEDERATION ON FISHERIES ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

Corrigendum

Page 3, paragraph 5.7, should read:

Specific aspects of the conservation of straddling stocks in the enclaves of enclosed and semi-enclosed seas.

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New York, 12-30 July 1993

LETTER DATED 26 MAY 1993 FROM THE DIRECTOR, OFFICE OF FISHERIES AFFAIRS, BUREAU OF OCEANS, INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, UNITED STATES DEPARTMENT OF STATE, ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

I am pleased to submit the enclosed position statement for the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks which elaborates principles and guidelines for the conservation and management of these living marine resources. I request that this position statement, along with this letter, be translated and distributed to delegations in advance of the July session of the Conference.

As was discussed at the April session of the Conference, the work and results of the Conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea. Moreover, because straddling stocks and highly migratory species migrate on both the high seas and within exclusive economic zones, the Conference may need to consider interests with regard to these resources relating to both areas, consistent with the Convention.

The United States is flexible on the nature of the outcome of the Conference. The results could, for example, be reflected in a United Nations General Assembly resolution or declaration, or in some other appropriate document. The United States does not believe, however, that it would be appropriate - or even possible - for the Conference to attempt to draft a treaty or other legally binding instrument. Such an undertaking would likely take many years to conclude and would consume valuable time and funds that would be better spent strengthening fishery conservation and management regimes at the regional and subregional levels.

(Signed) Larry L. SNEAD
Director
Office of Fisheries Affairs

Annex

POSITION STATEMENT SUBMITTED BY THE UNITED STATES OF AMERICA

The United States proposes that the Conference consider and adopt the following principles and guidelines for the conservation and management of straddling fish stocks and highly migratory fish stocks for use by States and by regional and international organizations:

1. Living marine resource (LMR) conservation regimes, including those for straddling fish stocks and highly migratory fish stocks, should recognize the principle of conserving resources at levels no less than that which will produce the long-term maximum sustainable yield. Management of fisheries resources should recognize the principle of sustained utilization at high levels of productivity. These regimes should be designed to address discrete conservation and social needs and objectives in specific geographical regions. States and entities concerned with international LMRs, including straddling stocks and highly migratory fish stocks, in specific geographical regions should cooperate to form organizations or bodies responsible for establishing conservation programmes in that region. The conservation programmes established by such organizations or bodies should be consistent with the LMR provisions of the United Nations Convention on the Law of the Sea. 1/

2. Regional organizations or bodies should emphasize multi-species, ecosystem oriented management and other approaches which take into account the relationships among species and their habitats in the establishment of international conservation regimes. The differences among LMRs should also be taken into account when necessary, and the principles which apply to one species (or group of species) may not apply to all others.

3. States and entities that join and/or observe a conservation programme established for a specified geographical area by an international organization or body that has been created for that purpose should generally be entitled to accrue benefits from the obligations that they share to conserve the specified resource. Other States or entities that seek to fish in a geographical area should cooperate with already established organizations or bodies responsible for conservation regimes in that area. Regional organizations or bodies should include provisions to establish conditions for allowing entry by new participants, on a case-by-case basis. However, all States and entities should give due consideration to the ramifications that would result from their initiating a new fishery on a resource which is already fully utilized.

4. Allowable catch levels should be established based upon the best available scientific information, and should take into account uncertainties concerning the size and productivity of the resource and its interrelationships with other resources. Absent data or an agreed-upon conservation programme, it should be the responsibility of the flag State to ensure that its fisheries for straddling fish stocks and highly migratory fish stocks are adequately regulated and rigorously monitored to permit the timely assessment of environmental impacts and the state of the exploited stocks. As in the case of other LMRs, straddling fish stocks and highly migratory fish stocks should be managed in a precautionary manner, recognizing that this approach does not necessarily

require a moratorium on fishing in a particular case, but that utilization should maintain the stocks at a productive level and preserve future use options. Stock assessments should accompany LMR utilization and be conducted with the cooperation and participation of other members of the international community with interests in the straddling fish stocks and/or highly migratory fish stocks of the region. The status of both target and associated species should be monitored to verify that catch levels are not having unacceptable impacts.

5. Conservation and management measures should be effectively enforced. Regional organizations should address enforcement; the flag State should ensure that its vessels follow agreed conservation and management measures (including effective monitoring, control and surveillance of fishing and transshipment activities) and should establish adequate penalties to deter violations.

6. In establishing conservation programmes, regional organizations or bodies should collect and share relevant catch and effort data, including by-catch data as well as other pertinent data - biological or otherwise - in an agreed format and time-frame.

7. States and entities should conduct scientific activities as may be established by the regional organization or body.

8. States and entities should seek to prevent flagging of fishing vessels for the purpose of avoiding conservation regimes adopted by regional organizations or bodies or any other activity that would undermine the conservation, scientific or enforcement programmes established by such organization or body.

9. States and entities as well as regional organizations or bodies should promote environmentally safe technologies, including minimizing pollution, by-catch, and other forms of waste, as part of any conservation programme for the area.

10. Regional organizations or bodies responsible for conservation programmes should include, as appropriate, a dispute-settlement mechanism.

11. States and entities should cooperate to prevent fishing by non-members that undermines agreed conservation and management measures. Remedies could include appropriate trade sanctions against countries operating in a manner that undermines international conservation measures.

Notes

1/ The distinctions between straddling fish stocks and highly migratory fish stocks with respect to the rights and obligations of coastal States and distant-water fishing States, as set forth in article 63 (2) and article 64 of the Law of the Sea Convention, should be taken into account in any international conservation programme.

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UNITED NATIONS CONFERENCE ON
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Organizational session
New York, 12-30 July 1993

ORGANIZATION OF WORK

List of issues
(Submitted by the Government of Colombia)

1. Substantive subjects and issues proposed for discussion at the Conference:

1.1. Since the majority of high seas fishing activities occur in areas where there is no system of administration and management for them, the Conference should work towards adopting the management and regulatory measures required for the administration of such fisheries, which take into account the principles of sustainable environmental management. It is important to consider the applicability of the International Code of Conduct for Responsible Fishing (Committee on Fisheries of the Food and Agriculture Organization of the United Nations, Rome, 15-19 March 1993). The applicability and relevance of that Code must be subject to the incorporation within it of the "precautionary principle".

1.2. Agreement on international, global and regional mechanisms to ensure effective control and monitoring of high seas fisheries

It should be borne in mind that the concept of sustainable development derives from the United Nations Conference on Environment and Development and that, accordingly, this focus should be maintained in each of the agreements reached under the convention.

The convention must take into account its applicability under different circumstances based on: the regional characteristics which influence and ecologically identify the international zone of one or more coastal States and which have an effect on the abundance and distribution of species; the ability of adjacent coastal States to have access to those resources and/or cooperation agreements for that

purpose; the environmental impact of ocean-atmosphere interaction on the abundance and distribution of the fish stocks in the high seas; the central economic dependence of coastal States on fisheries resources; the excess capacity of fishing fleets; the international market for fish products in the international zone (management measures applied in national jurisdiction zones must be compatible with those applied on the international market); periodic reviews of the degree of effectiveness of and compliance with the measures set out in regional and international agreements deriving from the Conference; and, lastly, a periodic review of the environmental impact of regional fishing activities.

1.3. The convention should reaffirm the validity of the United Nations Convention on the Law of the Sea. That would ensure its consistency with the agreements reached during the preparatory process leading up to the United Nations Conference on Environment and Development, the results of the International Conference on Responsible Fishing, held at Cancún, and the agreements reached in the Tlatelolco Platform on Environment and Development.

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

LETTER DATED 28 MAY 1993 FROM THE CHAIRMAN OF THE DELEGATION OF CANADA TO THE CONFERENCE ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

At the end of the first (organizational) session of the United Nations Conference on Straddling Fish Stocks and Migratory Fish Stocks last April, you invited participants to send you by the end of May their thoughts and views on the major issues that should be addressed at the second (substantive) session next July. You undertook to review these in the preparation of a paper which you planned to circulate in advance of the July meetings, to facilitate a more structured and focused discussion.

I am now writing to convey our proposed objectives and approach. Let me say at the outset that we do not have in mind a reopening or continuation of the United Nations Conference on the Law of the Sea negotiations. We take the Law of the Sea Convention as our basic frame of reference. In conformity with the United Nations General Assembly's mandate adopted by the Conference, we seek the effective implementation of the relevant provisions of the Convention to deal with the urgent problems of critically depleted straddling fish stocks and highly migratory fish stocks on the high seas. That is our point of departure. In our view, these problems can only be properly addressed in the context of an effective regime of conservation and management for straddling fish stocks and highly migratory fish stocks on the high seas. Our objective is to see the establishment of such a regime as the outcome of the Conference. To be effective such regime must be workable and this entails binding obligations to make it work. In our view this should be done by an international convention. We would envisage such a convention setting out the necessary elements and measures for an effective regime of conservation and management, supported by effective surveillance and control and a dispute settlement mechanism. While Parties would be bound by the provisions of the convention, the measures to be implemented would need to be tailored to the particular geographic and fisheries characteristics of each region. Additionally, it should be recognized that developing countries could only be able to implement their obligations to the extent that their financial, scientific and technological capabilities allowed.

As a contribution to the preparation of your paper and to the forthcoming discussions, I enclose herewith our proposals on necessary components for an effective conservation and management regime. These are set out in separate papers as follows:

- Regional fisheries conservation organizations and arrangements;
- Technical assistance to developing countries;
- Conservation and management measures;
- Surveillance and control measures;
- Enforcement:
  - Flag State authorization;
  - Offences by vessels or nationals;
  - Port State enforcement;
  - Boarding, inspection and arrest on the high seas;
  - Enforcement against unregistered vessels;
  - Enforcement against vessels that conceal their identification;
  - International cooperation;
- Settlement of disputes and arbitration.

We would ask that these papers together with a copy of this letter be translated and distributed to Conference participants.

We will also be glad to distribute at the appropriate time additional proposed provisions relating to definitions and scope of application of the convention we have in mind, which should be limited to straddling stocks and highly migratory fish stocks on the high seas.

We would look to the Conference focusing on these key elements with a view to securing the broadest possible consensus, following which these could be translated into a legally binding text. I should emphasize that it would be important to establish consensus on the substance, before engaging in a discussion of the optimum legal format.

(Signed) A. R. A. GHERSON
Chairman of the delegation of Canada
to the Conference

Annex

ORGANIZATION OF WORK

List of issues

(Submitted by the delegation of Canada)

I. REGIONAL FISHERIES CONSERVATION ORGANIZATIONS AND ARRANGEMENTS

States which participate in regional fisheries conservation organizations or arrangements shall take action, with due regard to the particular circumstances in individual regions, to have such organizations or arrangements:

(a) Adopt conservation and management measures;

(b) Adopt surveillance and control measures;

(c) Provide for compulsory and binding third-party settlement of disputes where overfishing or other harmful fishing practices are at issue.

II. TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES

1. The ability of developing countries to fulfil their obligations is dependent upon their capabilities, including the financial, scientific and technological means at their disposal.

2. States should cooperate, at a bilateral, regional or global level, with the support of the Food and Agriculture Organization of the United Nations (FAO) and other international bodies, to provide assistance, including technical assistance, to developing countries. Such assistance should be provided, inter alia, in respect of conservation and management, surveillance and control and enforcement, thereby enhancing the ability of developing countries to obtain the full social and economic benefits from sustainable utilization of marine living resources subject to their jurisdiction.

III. CONSERVATION AND MANAGEMENT MEASURES

Conservation and management measures:

(a) Shall:

(i) Be designed, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(ii) Take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened;

(iii) Recognize and give effect to the special interest of coastal States in straddling fish stocks and highly migratory fish stocks on the high seas;

(iv) Be designed so as not to have an adverse impact on straddling fish stocks and highly migratory fish stocks within the jurisdiction of coastal States;

(v) Be consistent with the conservation and management measures applied by the relevant coastal State or States within their exclusive economic zones;

(b) And shall include:

(i) Continuous scientific review and assessment of the state of stocks;

(ii) Provisions to ensure that fishing effort is commensurate with total allowable catches and quotas, as appropriate;

(iii) Establishment of minimum mesh sizes;

(iv) Promotion of the development and use of selective fishing gear and practices that minimize waste;

(v) Provisions to ensure that fishing activities on the high seas avoid overfishing of non-target species caught incidentally, and to minimize the wastage of such non-target or incidental catches;

(vi) Full, detailed, timely and accurate reporting of catches and effort (number of vessels and fishing days);

(vii) Provisions to ensure effective surveillance and control with respect to fishing activities.

IV. SURVEILLANCE AND CONTROL MEASURES

In order to ensure effective conservation and management, with due regard to the particular circumstances in individual regions, measures to ensure effective surveillance and control shall include:

(a) A uniform and internationally recognizable vessel marking system, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;

(b) Regular inspections at sea;

(c) Aerial surveillance;

(d) Locational transponders on each fishing vessel or monitoring of vessel operations by satellite;

(e) On-board observers;

(f) Regular hailing of catches either by radio or using computer technology;

(g) Catch verification and validation through dockside monitoring of landed catches and market statistics;

(h) Arrangements with the relevant coastal State for the use or sharing of its resources for aerial surveillance, inspection platforms and observers with a view to minimizing costs for both the regional fisheries conservation organization or arrangement and the coastal State concerned;

(i) Provision for appropriate resources to monitor vessel location and catches, and to detect infractions of applicable conservation and management measures, including those in respect of quotas;

(j) Authorization of fishing effort commensurate with quota or catch shares;

(k) Licensing of vessels for specific quotas;

(l) Rules for the provision of timely and accurate catch and effort data.

V. ENFORCEMENT

A. Flag State authorization

With respect to vessels entitled to fly their flag, States shall:

(a) Establish and operate a licensing system to authorize such vessels to fish on the high seas and require such vessels fishing on the high seas to carry the licence;

(b) Provide for information to be contained in fishing licences sufficient to enable States to fulfil their obligations;

(c) Prohibit in national legislation fishing on the high seas by such vessels without a licence.

B. Offences by vessels or nationals

States shall take such measures as may be necessary to ensure that their nationals or vessels entitled to fly their flag do not engage in any activity which contravenes applicable conservation and management measures, including:

(a) The enactment of domestic legislation, making it an offence to fish in any regulatory area of a regional fisheries conservation organization or arrangement contrary to applicable conservation and management measures;

(b) The investigation of suspected infractions;

(c) The initiation of compliance action (e.g., warnings, orders, directions, injunctions, prosecutions) consistent with the nature of the infraction;

(d) The establishment of penalties commensurate with the seriousness of the offence so as to constitute an effective deterrent against future infractions, including fines related to the value of the vessel, seizure of the catch, fishing equipment or vessel, and suspension or loss of licences;

(e) The expeditious prosecution of their nationals or vessels entitled to fly their flag where there are reasonable grounds to believe that they have contravened applicable conservation and management measures and, upon conviction of an offender, the imposition of penalties proportionate to the nature and gravity of the offence.

C. Port State enforcement

When a vessel is in a port of a State whose flag it is not entitled to fly, that State shall, to the extent practicable, exercise its right under international law to inspect the documents of that vessel. Such inspection shall also be carried out at the request of any other State. If, as a result of such inspection or other evidence, the State in question has reasonable grounds to believe that the vessel has contravened applicable conservation and management measures or has fished on the high seas without a licence, it shall so inform the flag State and the requesting State, if any, and may detain the vessel until such time as the port State and the flag State agree on the action to be taken.

D. Boarding, inspection and arrest on the high seas

The appropriate authorities of any State may board, inspect and arrest a vessel entitled to fly the flag of another State in areas of the high seas subject to applicable conservation and management measures when there are reasonable grounds to believe that such a vessel has contravened such measures. The arresting State shall notify the flag State of the action taken and shall detain the vessel pending appropriate action by the flag State or, with the latter's consent, by the arresting State.

E. Enforcement against unregistered vessels

When a vessel not entitled to fly the flag of any State is found fishing in an area of the high seas subject to applicable conservation and management measures, the appropriate authorities of any State may take such action as is necessary to arrest the vessel and prosecute it. Such State shall detain the

crew only for the time necessary to bring the arrested vessel to its nearest port and to complete its investigations. It shall expeditiously carry out all relevant investigations and judicial proceedings. It shall as soon as practicable inform the State or States of which the crew are nationals of the action taken.

F. Enforcement against vessels that conceal their identification

When a vessel is sighted fishing in an area of the high seas subject to applicable conservation and management measures by the appropriate authorities of a State which conclude that the vessel is concealing its identification or indicating a registry to which it does not belong, that State may take such action as is necessary to board the vessel and, if appropriate, arrest it, and to detain the vessel until such time as it is identified and the registry to which it belongs is determined. If the vessel is found to be entitled to fly the flag of a State, it may be further detained pending corrective action by the flag State or, with the latter's consent, by the arresting State. If the vessel is found to be unregistered, enforcement procedures shall be carried out accordingly.

G. International cooperation

States shall enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis. They shall, in particular:

(a) Assist each other in the determination of the registry of vessels reported to have engaged in activities contravening applicable conservation and management measures, based on information to which they have access;

(b) Establish and maintain effective arrangements for obtaining, preserving and transmitting evidence to prosecuting authorities;

(c) Provide to the port State, upon request, information to which they have access and all other reasonable assistance.

VI. SETTLEMENT OF DISPUTES

(a) In the event of a dispute, the States concerned shall seek a settlement through consultation, negotiation, mediation or other peaceful means of their own choice;

(b) If, 30 days following receipt of notification by one State to one or more other States that a dispute exists between or among them, the States concerned have not been able to settle their dispute through the means referred to in subparagraph (a):

(i) Where the United Nations Convention on the Law of the Sea has entered into force for all States concerned, Part XV of the Convention shall apply;

(ii) Where the United Nations Convention on the Law of the Sea has not entered into force for all States concerned, if they do not agree to settle the dispute in accordance with Part XV of the Convention the dispute shall be submitted, at the request of any concerned State, to arbitration in accordance with the provisions of the appendix to the present papers.

Appendix

ARBITRATION

1. A request for arbitration shall be made to the Secretary-General. The other State or States involved in the dispute shall be notified of this request. Following such a request, an arbitral tribunal shall be constituted by the Secretary-General to decide on the dispute.

2. The tribunal shall be composed of three members. States concerned shall, within 10 days of the date on which the request is transmitted pursuant to paragraph 1, each appoint one member of the tribunal. In the event that more than two States are involved in the dispute, the States sharing similar views on the questions to be considered shall seek to agree on the appointment of a common member of the tribunal.

3. If the members of the tribunal are not appointed pursuant to paragraph 2 within the 10-day period it specifies, the Secretary-General of the United Nations shall, within 10 days, appoint them.

4. The two members thus appointed shall then select a third member, who shall be the Chair. In the event the two members are unable within 10 days of the appointment of the second member to appoint the third, the Secretary-General shall, within 10 days of the end of the latter period, appoint the third member of the tribunal, who shall not be a national of any of the States involved in the dispute.

5. Within 10 days of the formation of the tribunal, the States concerned shall file with the tribunal a memorandum, copies of which shall be transmitted to all States concerned.

6. An oral hearing shall be convened at a place and on a date to be determined by the tribunal, within 30 days following the formation of the tribunal.

7. Decisions of the tribunal shall be final and binding. They shall be taken by a majority of the members of the Tribunal.

8. The tribunal shall communicate its decision to all States concerned within 30 days of the end of the oral hearing. Reasons in writing shall be communicated to the States concerned within 60 days of the decision.

9. If a dispute has been duly submitted to the tribunal, the tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the States concerned or to prevent damage to the stocks in question, pending a final decision.

10. The Tribunal shall adopt such rules of procedure as it deems necessary.

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FISH STOCKS AND HIGHLY MIGRATORY
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New York, 12-30 July 1993
Agenda item 6*

ORGANIZATION OF WORK

List of issues

(Submitted by the delegation of Japan)

I. GENERAL COMMENTS ON CONSERVATION AND MANAGEMENT OF STRADDLING STOCKS AND HIGHLY MIGRATORY SPECIES

1. The living resources of the high seas, including straddling stocks and highly migratory species, should be utilized for the interest of mankind. Measures for their conservation should be taken for the benefit of all States concerned and be based on scientific information in a context that ensures the objective of optimum utilization.

2. It is in the common interest, both of the fishing States and the coastal States, to ensure the conservation of straddling stocks and highly migratory species. The basic idea contained in present customary international law as well as the United Nations Convention on the Law of the Sea is that a fair balance must be maintained between the duties and rights of coastal States and those of fishing States, and conservation measures should be based on scientific information and be considered in a context that ensures the objective of optimum utilization of the living resources within and beyond the 200-nautical-mile zone in its entirety. The relevant provisions of the Convention do not stipulate the special interests or preferential rights of the coastal States in this respect. These conservation measures in areas beyond and adjacent to the 200-nautical-mile zone should not be taken unilaterally by the coastal States but are to be ensured by the cooperation of all States concerned. Conservation measures taken within the exclusive economic zone and those of such measures as applied to its adjacent high-seas area should be assessed on an equal basis, ensuring that both measures are complementary to each other.

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* A/CONF.164/5.

3. Since the Law of the Sea Convention is a valuable instrument establishing a globally acceptable regime for the management of the living resources, the effort to promote effective conservation and management should be continued within the framework of the Convention.

4. The achievements and the efforts made by regional fishery organizations which take the conservation measures based on the individual situation of the region should be fully recognized.

II. COMMENTS ON ISSUES TO BE DISCUSSED AT THE UPCOMING UNITED NATIONS CONFERENCE

5. The main purpose of the upcoming United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks mandated by Agenda 21 of the United Nations Conference on Environment and Development (UNCED) is to promote effective implementation of the relevant provisions of the United Nations Convention on the Law of the Sea. The mandate of the Conference clearly states that its work and results should be consistent fully with the provisions of the Convention.

6. According to this principle, the outcome of the Conference should:

(1) Be of a non-binding nature, such as in the form of recommendations or guidelines;

(2) Be in full accordance with the relevant provisions of the United Nations Convention on the Law of the Sea and ensure the effective implementation of the contents of the Convention;

(3) Fully take into account the long experience in management of living resources of present international fishery organizations, such as the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Northwest Atlantic Fisheries Organization (NAFO);

(4) Be based on the concept of cooperation among all countries concerned, including fishing and coastal States, on an equal basis. Any idea of preferential rights of coastal States with respect to the management of living resources beyond their 200-nautical-mile zones should not be introduced;

(5) Be acceptable and feasible for all States concerned. To this end, they are to be adopted by consensus.

7. In case that concrete measures be discussed at the Conference, the following points should be taken into account:

(1) Consistency of measures taken within and beyond the 200-nautical-mile zones. These measures should be complementary to each other, taking scientific evidence into account;

(2) Regional management scheme with the participation on an equal-footing basis of all concerned fishing and coastal States;

(3) Cooperation between fishing States and coastal States with respect to scientific research and handling of data so as to collect and accumulate scientific information for the conservation of living resources, and recognition of the need for the provision of information by coastal States as well as fishing States for consistent management both within and beyond the 200-nautical-mile zones;

(4) Introduction of a cooperative scheme under an appropriate regional fisheries organization to complement enforcement by the flag State;

(5) Promotion of a monitoring system of vessel operations by satellite to improve the transparency of fishing activities;

(6) Cooperation of all States concerned to encourage non-parties to join a regional fisheries organization, and to discourage the non-parties' unregulated fishing activities;

(7) Existing procedures for dispute settlement, such as those provided by the Convention on Conservation of Antarctic Marine Living Resources (CCAMLR);

(8) Enhancement of assistance to developing countries in terms of transfer of technology for scientific research, handling of data and responsible fishing operations.

8. The FAO Technical Meeting on High Seas Fisheries in September 1992 discussed the technical problems of high-seas fisheries operations and prepared a report to submit to the United Nations. A substantial contribution from FAO is expected.

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993
Agenda item 6*

ORGANIZATION OF WORK

List of issues

(Submitted by the delegation of the Republic of Korea)

1. Improvement of the current conservation and management measures both on the high seas and in the exclusive economic zone:

- Linkage between the conservation measures within the exclusive economic zone and those beyond the exclusive economic zone (management of fisheries resources for the straddling and highly migratory species in the exclusive economic zone;

- A joint management regime based on the scientific assessment of straddling and highly migratory stocks, under joint sponsorship of the States concerned.

2. Clarification of interpretation rules for the 1982 United Nations Convention on the Law of the Sea: 1969 Vienna Convention on the Law of Treaties or the rules of customary international law.

3. Rights and duties of the coastal and the distant-water fishing States on the high seas: clarification and definition under the Convention on the Law of the Sea.

4. Rights and interests of the coastal States under article 63, paragraph 2, of the Convention on the Law of the Sea.

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* A/CONF.164/5.

5. A need for collecting the best scientific information available with the participation and contribution of all parties concerned in determining the conservation measures for fisheries resources on the high seas, including the systematic collection and exchange of scientific information and catch statistics.

6. A need for new subregional and regional organizations to undertake conservation measures for fisheries on the high seas.

7. The issue of the rights to allocation of fisheries resources for the new entrants to the regional and subregional conservation mechanisms for fisheries on the high seas.

8. Examination of the legality of the unilateral conservation jurisdiction beyond and adjacent to the area of the 200-mile exclusive economic zone:

(a) Under the Convention on the Law of the Sea;

(b) Under customary rules of international law.

9. Means of dispute settlement concerning the conservation and the utilization of fisheries resources on the high seas.

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New York, 12-30 July 1993

LETTER DATED 14 JUNE 1993 FROM THE DIRECTOR-GENERAL, FISHERIES, COMMISSION OF THE EUROPEAN COMMUNITIES, ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

Please find enclosed a statement outlining the position of the European Economic Community for the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. This position statement is drafted in the form of recommendations which are aimed at improving fishing cooperation among States as reflected in the mandate of this Conference (para. 2 of General Assembly resolution 47/192). In the Community's view, the results of the Conference, which should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, should be formulated as recommendations or declarations which may be approved by the General Assembly of the United Nations.

I would be grateful to you if the Community's position statement could be translated and circulated, together with this letter, to all delegations in advance of the July session of the Conference. I can assure you that we approach this session in a spirit of cooperation and that we will make the best endeavour to contribute towards a successful outcome of this Conference. In this respect I also wish to inform you that the Community intends to participate in the voluntary fund for the purpose of assisting developing countries to participate in the Conference.

(Signed) J. ALMEIDA SERRA
Director-General

Annex

POSITION STATEMENT SUBMITTED BY THE EUROPEAN ECONOMIC COMMUNITY

The European Economic Community (EEC) proposes that the nature of the outcome of the Conference should be a set of realistic and technically applicable recommendations on establishing, improving or extending cooperation for the conservation and management of straddling fish stocks and highly migratory fish stocks. These recommendations, which have to be fully consistent with the provisions of the United Nations Convention on the Law of the Sea should be equally comprehensible for the fishermen and all other parties concerned.

As straddling stocks and highly migratory species are migratory both inside and outside the areas under fisheries jurisdiction of the coastal States and since the individual fish stocks have to be considered as a biological unit, the recommendations which may be laid down should furthermore guarantee the mutual interest of all States and in particular of the coastal States and those engaged in distant-water-fishing.

The EEC further proposes that the Conference consider the following recommendations within four main chapter headings:

I. CONSERVATION AND MANAGEMENT

1. Each conservation and management system of living marine resources, including straddling stocks and highly migratory species, has to be conceived in such a way as to allow a rational and sustainable utilization. The utilization of marine resources has to be envisaged within its long-term development and has to take account of the economic activities connected with their utilization. The concept of maximum sustainable yield remains one of the valid reference points for management.

2. Similarly, fisheries management has to pay due regard to the concept of responsible fishing, in harmony with the environment. To this end, and in particular with regard to straddling stocks and highly migratory species, it is necessary that resource management be based on the principle of the unity of the stock within the totality of its distribution area and take account of all fishing methods.

3. All management measures should be based on the best scientific advice available and should take account of the analysis of the levels of acceptable uncertainty when taking management decisions.

4. The measures of precautionary management taken in the absence of sufficient scientific data should avoid unnecessary moratoriums on fishing activities. This principle has to take account of the fishing activities safeguarding the biodiversity and/or of the alarming levels concerning a stock or group of stocks. All the fishing activities subject to the principle of precautionary management should be subject

to continuous and detailed monitoring. The precautionary management measures should be revised or revoked if new scientific information indicates that the principle of precautionary management should not necessarily be maintained.

5. All management measures should equally take account of the analysis of the entirety of the variables, outside the fishing activities, whether or not they be of anthropogenic origin, which may contribute to modifying distribution and the abundance of fish stocks. Close attention should be paid to the effects of climatic, oceanic and environmental changes.

6. Scientific research should be the basis for any rational resource management measure. Taking account of all the interdependences of the species and the environment, the multi-specific approach of fisheries research, established inside international organizations or inside other competent authorities, should be encouraged. The statistical data concerning the fishing activities, as well as their quality and their availability for scientific purposes, should constitute the basis for any correct evaluation of fish stocks. In this connection, data concerning catches, including by-catches, the effort and other relevant biological information, should be collected by the international fisheries organizations concerned.

7. Close attention should also be paid to aspects relating to discards and to incidental catches. The development of more selective methods of fishing, as well as the promotion of their use, should constitute research priorities in order to improve selectivity of fishing gear and to develop targeted fisheries by minimizing the waste caused by discards and unwanted catches, in particular of species protected by international conventions.

II. REGIONAL AND SUBREGIONAL ORGANIZATIONS

1. The conservation and management rules concerning the exploitation of straddling stocks and highly migratory species should, in geographical areas where that proves necessary, be developed within a framework of international cooperation, with the participation of all the parties concerned and within regional or subregional organizations. In the absence of a competent international body for resource management in a given region, all necessary efforts should be undertaken to create one. Cooperation is also necessary whenever there is no international organization competent for the management of these resources.

2. International cooperation must constitute one of the foundation-stones for the management of straddling stocks and highly migratory species. To this end, States should adopt effective measures within a bilateral or multilateral cooperation framework and at the most suitable geographical level, in order to ensure the establishment of management programmes which are always in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.

3. The objective of conservation requires that the measures taken should be aimed at establishing a "concordance" between those applicable within the area of national jurisdiction and those applicable in the adjacent area while respecting the rights of all the parties concerned. However, the measures are governed by different legal systems and so "concordance" does not simply mean the alignment of measures to be taken in international waters with those taken by the coastal State in its exclusive zone. What is required is definition of a coherent conservation policy in the two areas. Fisheries in the adjacent area remain fisheries on the high seas subject to the relevant rules in the Convention.

4. International management measures must be conceived in such a way as to be applied effectively. Flag States are responsible for applying the management measures recommended by the competent international organizations.

5. Statistics, research, monitoring, surveillance, control and specific dispute settlement procedures would form part of the regional institutional structures.

6. Fishing by non-contracting parties has become preoccupying and calls for appropriate solutions. Only those States which cooperate in the decision-making at the regional or subregional level or are willing to bear responsibility for those decisions directed towards the conservation and management regime should fish for the regulated species in the specified area. In this context non-contracting parties should be invited to join the relevant international fisheries organizations.

III. MONITORING, SURVEILLANCE AND CONTROL

1. Conservation and management measures should be effectively applied. The flag State should ensure that its vessels respect internationally agreed conservation and management measures.

2. A system of fishing licences attached to a vessel authorized to fish on the high seas, issued and managed by the flag State, may contribute to improved regulation of exploitation and transparency. Such a system of licences, together with a record of such fishing vessels established by the flag State, could equally be used to prevent flagging of fishing vessels for the purpose of avoiding compliance with international conservation and management measures.

3. Control arrangements should be developed whose implementation would, in order to ensure this effectiveness, remain the responsibility of the States concerned.

4. Fishing vessels and fishing gear should be marked for identification purposes as appropriate in accordance with general standard.

IV. TECHNICAL COOPERATION

1. States, with the support of global, regional or subregional organizations, as appropriate, should cooperate and contribute financially in statistics and in bio-economic research programmes, resource evaluation, environment and improved selectivity of fishing gear.

2. The ability of developing countries to fulfil the conservation and management objectives is dependent upon their capabilities, including the financial, scientific and technological means at their disposal. Adequate financial, scientific and technological cooperation should be provided to support action by them to implement these objectives.

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
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New York, 12-30 July 1993

COMMENTS ON ISSUES BEFORE THE CONFERENCE SUBMITTED BY THE DELEGATION OF AUSTRALIA

The following suggestions are offered by Australia to assist in identifying the range of matters for consideration at the United Nations Conference session in July. Australia hopes to work with other countries to achieve strong outcomes from the Conference capable of practical application to the problems occurring in high seas fisheries for straddling stocks and highly migratory species.

There is a need for a balance between the development of global standards/principles for the management and conduct of fishing operations and the recognition of specific regional requirements. Distant-water fishing fleets are highly mobile and, in the absence of globally applicable standards, solutions in one region may result in exacerbation of problems in another. Nevertheless, in each of the oceans where fishing on the high seas occurs, there are specific biological, geographical, economic and political characteristics which need to be taken into account if effective solutions for the conservation and management of fishery resources are to be achieved.

For many of the problems which underlie the calls for the Conference the solutions go beyond whether or not the resource being fished is a straddling stock or a highly migratory species.

The following list has been prepared to assist in identifying issues for consideration and in developing the structure of the work programme for the July session of the Conference.

1. Identification of specific fisheries for straddling stocks and highly migratory species (SS/HMS) where there are problems in relation to high seas fishing -

   - and the underlying issues which must be dealt with to address those problems.

2. The information base for decision-making in relation to SS/HMS fisheries:

   - Catch and effort data collection from high seas fleets, including quality, timeliness and dissemination;

   - Default obligations for high seas fishers, e.g., obligation to collect and share relevant catch and effort information:

     - Repositories for data;

     - Who should have access to data.

3. Research:

   - Development and information exchange on new stock assessment methodologies;

   - Cooperation in scientific research:

     - Carriage and/or facilitation of operations of scientific observers and researchers;

     - Cooperation in tagging programmes.

4. Information on fleet sizes, capacity, structure and operations:

   - Overcapacity of world fishing fleets and its effects on high seas resources;

   - Management action needed to address overcapacity.

5. Access to high seas fisheries by developing countries.

6. Elaboration of the range of matters which should be embraced by the duty to cooperate specified in the United Nations Convention on the Law of the Sea:

   - E.g., from data collection/sharing through to dispute settlement;

   - Forms of cooperation available under articles 63 (2) and 64;

   - Obligations flowing from the common property nature of fisheries resources on the high seas, e.g., accountability on the part of those fishing high seas resources to the international community;

   - Value of institutional frameworks specifically appropriate to each region.

7. Elaboration of flag State responsibility:

   - Principles and standards for flag State control of high seas fishing operations:

- Possible mechanisms for establishing operational standards, e.g., international code of conduct;

- Dealing with problems caused by reflagging;

- Flag State responsibility for data collection and verification, as well as monitoring, control and surveillance.

8. Management techniques available to SS/HMS fisheries:

- Input controls - vessel numbers, gear limitations, etc.;

- Optimum sustainable yield, total allowable catches (TACs) and national allocations;

- Quota allocation mechanisms/criteria;

- Seasonal/area closures;

- Regulation of transshipment.

9. Precautionary approaches to management.

10. Monitoring, control and surveillance systems, including:

- National and integrated satellite data transmission systems;

- Regional and international vessel registers;

- Data verification systems;

- Regional inspection systems;

- Internationally recognizable vessel and gear marking systems;

- Multilateral observer programmes and/or access to data for research personnel.

11. Effectiveness of regional fishery organizations, including consideration of competence, coverage, functions, membership and decision-making processes:

- Possible remedies for existing problems;

- Dispute settlement procedures.

12. Use of environmentally sustainable fishing methods and practices:

- Minimizing impacts on non-target species:

  - Fish by-catch;

  - Incidental catches of other marine life.

13. Obtaining maximum value from catch in high seas fisheries - addressing issues of waste in catching, processing and storage.

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STRADDLING FISH STOCKS AND
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New York, 12-30 July 1993

LETTER DATED 12 JULY 1993 FROM THE PERMANENT REPRESENTATIVE OF ARGENTINA TO THE UNITED NATIONS ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

I have the honour to request that you have the attached note, containing the Argentine Government's suggestions for the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, circulated as a document of the Conference.

(Signed) Emilio J. CARDENAS
Ambassador
Permanent Representative of Argentina
to the United Nations

Annex

ORGANIZATION OF WORK

List of Issues

(Submitted by the delegation of Argentina)

The regime that this Conference establishes should be in conformity with the provisions of the United Nations Convention on the Law of the Sea and should contain a number of principles and practical measures.

The regime should be included in a binding international instrument. This would ensure the effective management and conservation of the living resources of the high seas, which is an objective of the United Nations Convention on the Law of the Sea.

The international instrument should contain an obligatory procedure for the peaceful settlement of disputes. It should also include a set of provisions facilitating technical assistance to developing countries in order to enable them to implement the regime and ensure the rational utilization of their living marine resources.

The establishment of new regional fisheries bodies does not per se solve the problem of managing and protecting living marine resources.

Nevertheless, the effectiveness of existing regional fisheries bodies should be strengthened. These organizations should establish the conditions for the admission of new participants.

Likewise, when there exist provisions on the management and conservation of living marine resources, adopted by the aforementioned bodies, or arrangements for management and conservation in a specific geographical area, the nationals of third States should comply with those provisions.

1. Principles

1.1. Fishing on the high seas should be carried out on the basis of environmentally sustainable practices (conservation and optimal use of living resources).

1.2. Because of the biological dependence of straddling fish stocks (relation of marine species to the ecosystems of the jurisdictional waters of coastal States), high-seas fishing should not have an adverse effect on the resources under the jurisdiction of coastal States.

1.3. The flag State should be made effectively responsible for fishing vessels flying its flag on the high seas.

1.4. All States whose nationals fish on the high seas should bear in mind and respect the special interests of coastal States, as well as their special

responsibilities for the conservation of living marine resources in the areas adjacent to their exclusive economic zones.

1.5. Given the absence of cooperation agreements on the management and conservation of living resources in the area adjacent to exclusive economic zones, the conservation measures of the coastal State should, provisionally, be applied without discrimination. Likewise, the conservation measures applied by the fishing States should be consistent with those adopted by the coastal States (the consistency principle).

Nevertheless, the most appropriate procedure would be for such management and conservation measures to be adopted on the basis of a cooperative effort between the coastal States and those fishing in the area adjacent to the exclusive economic zone.

2. Practical measures

2.1. Cooperation between the coastal State and the States fishing in the area adjacent to its exclusive economic zone should be made effective through systems for the exchange of scientific information and information on catches, the cost of which should be equitably shared.

2.2. All States should adopt legislation to prevent and punish violations of the applicable measures for the management and conservation of living marine resources.

2.3. Monitoring and control measures for vessels fishing on the high seas need to be agreed upon in order to prevent, and where appropriate punish, violations of the applicable provisions regarding the management and conservation of living marine resources.

High seas surveillance and monitoring measures:

- Adoption of inspection regimes based on cooperation between coastal States and the States whose nationals fish in a high seas area adjacent to their exclusive economic zones;

- Possibility of prohibiting the transshipment of fish or fish products on the high seas;

- Establishment of systems for monitoring catches and fishing operations (on-board observers and satellite monitoring);

- Agreement on and implementation of a uniform international system for the marking and identification of fishing vessels;

- Establishment of an international register of fishing vessels;

- Early adoption of the draft convention being drawn up in the Food and Agriculture Organization of the United Nations (FAO) to prevent reflagging of vessels on the high seas.

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New York, 12-30 July 1993

DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

(Submitted by the delegations of Argentina, Canada, Chile, Iceland and New Zealand)

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The Parties to this Convention

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Convention:

(a) "international conservation and management measures" means measures to conserve or manage one or more straddling fish stocks or highly migratory fish stocks on the high seas that are adopted and applied in accordance with the principles of international law as reflected in the United Nations Convention on the Law of the Sea and, in particular, such measures adopted or approved by regional or subregional fisheries conservation organizations or under regional fisheries conservation arrangements;

(b) "exclusive economic zone" means the exclusive economic zone as defined in article 55 of the United Nations Convention on the Law of the Sea and includes 200-nautical-mile fishing zones;

(c) "fishing vessel" includes any ship or boat or any other description of vessel used in or equipped for:

(i) fishing or processing or transporting fish from fishing grounds; or

(ii) provisioning, servicing repairing or maintaining any vessels of a fishing fleet while at sea;

(d) "flag State" means the State whose flag a vessel is entitled to fly;

(e) "highly migratory fish stocks" means stocks of fish species listed in Annex I to the United Nations Convention on the Law of the Sea;

(f) "Parties" means parties to this Convention;

(g) "port State" means a State in whose port or offshore terminal a vessel entitled to fly the flag of another State is present;

(h) "regional or subregional fisheries conservation arrangement" means a regional or subregional arrangement or agreement involving two or more States, including the relevant coastal State or States, for the purpose of conserving and managing straddling fish stocks or highly migratory fish stocks on the high seas;

(i) "regional or subregional fisheries conservation organization" means a regional or subregional organization involving two or more States, including the relevant coastal State or States, which adopts conservation and management

measures with respect to straddling fish stocks or highly migratory fish stocks on the high seas;

(j) "regulatory area" means an area of the high seas in respect of which a regional or subregional fisheries conservation organization adopts conservation and management measures or to which a regional or subregional fisheries conservation arrangement applies;

(k) "State" includes any regional economic integration organization to which its member States have transferred competence over matters covered by this Convention;

(l) "straddling fish stocks" means stocks occurring both within the exclusive economic zone of a coastal State and in an area beyond and adjacent to that zone and includes stocks of associated species.

Article 2

Application

This Convention shall apply to straddling fish stocks and highly migratory fish stocks on the high seas.

Article 3

Objective

The objective of this Convention is to establish, in accordance with the principle of sustainable development, an effective regime for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, consistent with the United Nations Convention on the Law of the Sea.

PART II

CONSERVATION AND MANAGEMENT

Article 4

Conservation and management measures

Parties shall implement conservation and management measures

(a) Which shall:

(i) Be designed, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence

of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(ii) Take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened;

(iii) Recognize and give effect to the special interest of coastal States in straddling fish stocks and highly migratory fish stocks on the high seas;

(iv) Be designed so as not to have an adverse impact on straddling fish stocks and highly migratory fish stocks within the jurisdiction of coastal States;

(v) Be consistent with the conservation and management measures applied by the relevant coastal State or States within their exclusive economic zones;

(b) And shall include:

(i) Continuous scientific review and assessment of the state of stocks;

(ii) The establishment of total allowable catches and quotas, as appropriate;

(iii) Provisions to ensure that fishing effort (number of vessels and fishing days) is commensurate with total allowable catches and quotas, as appropriate;

(iv) Establishment of minimum mesh sizes;

(v) Promotion of the development and use of selective fishing gear and practices that minimize waste;

(vi) Provisions to ensure that fishing activities on the high seas minimize incidental catch;

(vii) Full, detailed, accurate and timely reporting of catches and effort;

(viii) Provisions to ensure effective surveillance and control of fishing activities.

Article 5

Precautionary measures

Parties shall, in order to achieve the objective of this Convention, apply appropriate precautionary measures. Where there are threats of serious or irreversible damage to straddling fish stocks or highly migratory fish stocks,

the lack of full scientific certainty shall not be used as a reason to postpone such measures.

Article 6

Provision of information

Parties shall ensure that fishing vessels entitled to fly their flag provide them with such information on their operations as may be necessary to enable them to fulfil their obligations under this Convention and, in particular, shall cooperate with other Parties to:

(a) Promote enhanced collection on the high seas of data necessary for the conservation and management of straddling fish stocks and highly migratory fish stocks;

(b) Develop and share analytical and predictive tools such as stock assessment and bio-economic models;

(c) Exchange on a regular basis up-to-date data and information necessary for stock assessment;

(d) Establish or expand appropriate monitoring and assessment programmes.

PART III

SURVEILLANCE AND CONTROL

Article 7

Surveillance and control measures

In order to ensure effective conservation and management, Parties shall take measures to ensure effective surveillance and control which, with due regard to the particular circumstances in individual regions, shall include:

(a) A uniform and internationally recognizable vessel marking system, such as the Food and Agriculture Organization of the United Nations (FAO) Standard Specifications for the Marking and Identification of Fishing Vessels;

(b) Regular inspections at sea;

(c) Aerial surveillance;

(d) Locational transponders on each fishing vessel or monitoring of vessel operations by satellite;

(e) On-board observers;

(f) Regular hailing of catches, either by radio or using computer technology;

(g) Catch verification and validation through dockside monitoring of landed catches and market statistics;

(h) Arrangements with the relevant coastal State or States for the use or sharing of their resources for aerial surveillance, inspection platforms and observers, with a view to minimizing costs for both the regional fisheries conservation organization or arrangement and the coastal State or States concerned;

(i) Provision for appropriate resources to monitor vessel location and catches, and to detect infractions of international conservation and management measures, including those in respect of quotas;

(j) Authorization of fishing effort commensurate with quota or catch shares;

(k) Licensing of vessels for specific quotas;

(l) Rules for the provision of accurate and timely catch and effort data.

PART IV

ENFORCEMENT

Article 8

Flag State authorization

With respect to fishing vessels entitled to fly their flag, Parties shall:

(a) Establish and operate a licensing system to authorize such vessels to fish on the high seas and require them to carry licences when fishing on the high seas;

(b) Provide for information to be contained in such fishing licences sufficient to enable them to exercise effectively their responsibilities under this Convention in respect of such vessel;

(c) Prohibit in national legislation fishing on the high seas by such vessels without licences;

(d) Take measures to ensure that fishing vessels entitled to fly their flag operating in an area of the high seas adjacent to the exclusive economic zone of a coastal State do not fish in that exclusive economic zone in contravention of the laws and regulations of the coastal State.

Article 9

Offences by vessels or nationals

Parties shall take such measures as may be necessary to ensure that fishing vessels entitle to fly their flag or their nationals do not engage in any activity which undermines the effectiveness of international conservation and management measures, including:

(a) The enactment of national legislation, making it an offence to engage, in any regulatory area, in any activity which undermines the effectiveness of international conservation and management measures;

(b) The investigation of suspected offences;

(c) The initiation of compliance action (e.g., warnings, orders, directions, injunctions, prosecutions) consistent with the nature and gravity of the offence;

(d) The establishment of penalties which shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Convention and to deprive offenders of the benefits accruing from their illegal activities, including refusal, suspension or withdrawal of licences as well as fines related to the value of the fishing vessel, seizure or forfeiture of the catch, fishing equipment or vessel;

(e) The expeditious prosecution of the owners, operators or masters of fishing vessels entitled to fly their flag or of their nationals where there is sufficient evidence that they have undermined the effectiveness of international conservation and management measures and, upon conviction of an offender, the imposition of penalties proportionate to the nature and gravity of the offence.

Article 10

Flagging

Parties shall take such measures as may be necessary to prevent the flagging or reflagging of fishing vessels for the purpose of avoiding compliance with international conservation and management measures and shall, to that end, cooperate, inter alia, through the appropriate international organizations.

Article 11

Port State enforcement

Each Party shall, to the extent practicable, exercise its right under international law to inspect the documents of fishing vessels, other than vessels entitled to fly its flag in its ports or offshore terminals. Such inspection shall also be carried out at the request of any other Party. If, as a result of such inspection or other evidence, that port State has reasonable grounds to believe that the fishing vessel has undermined the effectiveness of

international conservation and management measures or has fished on the high seas without a licence, it shall so inform the flag State and the requesting Party, if any, and may detain the fishing vessel until such time as it agrees with the flag State on the action to be taken.

Article 12

International cooperation

In addition to other measures provided for in this Convention, Parties shall enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Convention. They shall, in particular:

(a) Assist each other in the determination of the registry of fishing vessels reported to have engaged in activities undermining the effectiveness of international conservation and management measures, based on information to which they have access;

(b) Establish and maintain effective arrangements for obtaining, preserving and transmitting evidence to prosecuting authorities;

(c) Upon request of Party which is a port State, provide information to which they have access and all other reasonable assistance.

Article 13

Boarding, inspection and arrest on the high seas

The appropriate authorities of any Party may board and inspect a fishing vessel entitled to fly the flag of another Party sighted in a regulatory area, and when they have sufficient evidence that the vessel has undermined the effectiveness of international conservation and management measures, may arrest it. The arresting Party shall notify the flag State of the action taken and shall detain the vessel pending appropriate action by the flag State or, with the latter's consent, by the arresting Party.

Article 14

Enforcement against unregistered vessels

When a fishing vessel not entitled to fly the flag of any State is sighted fishing in a regulatory area, the appropriate authorities of any Party may take such action as is necessary to arrest the vessel and provide for prosecution. The arresting Party shall detain the crew only for the time necessary to bring the arrested vessel to the nearest port of that Party and to complete its investigations. It shall expeditiously carry out all relevant investigations and judicial proceedings. It shall as soon as practicable inform the State or States of which the crew are nationals of the action taken.

Article 15

Enforcement against vessels that conceal their identification

When a fishing vessel is sighted fishing in a regulatory area by the appropriate authorities of a Party which conclude that the vessel is concealing its identification or indicating a registry to which it does not belong, that Party may take such action as is necessary to board the vessel, inspect and, if appropriate, arrest it, and to detain the vessel until such time as it is identified and the registry to which it belongs is determined. If the vessel is found to be entitled to fly the flag of a Party, it may be further detained pending appropriate action by the flag State or, with the latter's consent, by the arresting Party. If the vessel is found to be unregistered, the provisions of article 14 shall apply.

PART V

REGIONAL FISHERIES ORGANIZATIONS AND ARRANGEMENTS

Article 16

Regional circumstances

The provisions of this Part shall be applied with due regard to the particular circumstances in individual regions.

Article 17

Minimum standards

Parties which participate in regional fisheries conservation organizations or arrangements shall take action to have such organizations or arrangements:

(a) Adopt conservation and management measures as set out in Part II;

(b) Adopt surveillance and control measures as set out in Parts III and IV;

(c) Provide for compulsory and binding third-party settlement of disputes where overfishing or other harmful fishing practices are at issue, considering, as appropriate, the adoption of the procedure outlined in article 25 for that purpose or its use as a model. Parties which do not participate in the relevant organization or arrangement shall be entitled to invoke or to submit voluntarily to any settlement procedure so established, in which case they shall be bound by the resulting decision.

Article 18

New participants

Parties which participate in a regional fisheries conservation organization or arrangement shall, where appropriate, encourage States with an interest in a high seas fishery which it regulates to participate in such organization or arrangement. Such Parties may:

(a) As part of a new participant's contribution to the conservation measures of such organization or arrangement:

(i) Make allocations of any stock they regulate to new participants subject to a waiting period;

(ii) In cases where stocks are depressed, make allocations of any stock they regulate to new participants only when the total allowable catch exceeds a threshold level determined for that purpose by the organization or under the arrangement;

(iii) In cases where stocks are at appropriate levels and fully allocated, make allocations of any stock they regulate to new participants subject to quotas being relinquished by existing participants;

(b) In cases where quotas are relinquished by existing participants, decide to reallocate those quotas to new participants, provided that special consideration shall be given to a coastal State with regard to straddling fish stocks or highly migratory fish stocks occurring within both its exclusive economic zone and the regulatory area and, secondarily, to developing States.

Article 19

Enclosed and semi-enclosed seas

In establishing a regional fisheries conservation organization or arrangement in respect of an enclosed or semi-enclosed sea comprising, inter alia, an exclusive economic zone or zones extending up to a limit of 200 nautical miles, Parties shall provide for the consent of the coastal State or States concerned in the establishment of all conservation and management measures.

Article 20

Unregulated areas of the high seas

In areas of the high seas not subject to international conservation and management measures, Parties which are coastal States and other Parties which harvest straddling fish stocks or highly migratory fish stocks in those areas shall, as appropriate, cooperate to establish or participate in a fisheries conservation organization or arrangement on a bilateral or multilateral basis.

Article 21

International assessment

Parties shall cooperate to allow the international community to monitor and assess the activities of regional fisheries conservation organizations and arrangements. For this purpose they shall take action to have such organizations and arrangements submit annual reports to the Committee on Fisheries of FAO. They shall also request FAO to prepare an annual compendium of these reports, which would in addition identify the issues outstanding and formulate recommendations as appropriate.

PART VI

DEVELOPING COUNTRIES

Article 22

Enhancement of the ability of developing countries to fulfil their obligations

Parties shall cooperate to enhance the ability of developing countries to fulfil the obligations provided for in this Convention by improving their capabilities, including the financial, scientific and technological means at their disposal.

Article 23

Technical assistance to developing countries

Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties which are developing countries. Such assistance should be provided, inter alia, in respect of conservation and management, surveillance and control and enforcement, thereby enhancing the ability of Parties which are developing countries to obtain the full social and economic benefits from sustainable utilization of marine living resources subject to their jurisdiction.

PART VII

NON-PARTIES

Article 24

Non-parties

1. Parties shall encourage States not parties to this Convention to adhere to it and shall encourage non-parties to adopt laws and regulations consistent with its provisions.

2. Parties shall cooperate in a manner consistent with this Convention and international law to the end that fishing vessels entitled to fly the flags of non-parties do not engage in activities that undermine the effectiveness of international conservation and management measures.

3. Parties shall exchange information amongst themselves with respect to activities of fishing vessels flying the flags of non-parties that undermine the effectiveness of international conservation and management measures.

PART VIII

SETTLEMENT OF DISPUTES

Article 25

Settlement of disputes

1. In the event of a dispute concerning the interpretation or application of this Convention, the Parties concerned shall seek a settlement through negotiation, enquiry, mediation, conciliation or other peaceful means of their own choice.

2. If, thirty days following receipt of notification by one Party to one or more other Parties that a dispute exists between or among them, the Parties concerned have not been able to settle their dispute through the means referred to in paragraph 1:

(a) Where the United Nations Convention on the Law of the Sea has entered into force for all Parties concerned, Part XV of that Convention shall apply;

(b) Where the United Nations Convention on the Law of the Sea has not entered into force for all Parties concerned, if they do not agree to settle the dispute in accordance with Part XV of that Convention the dispute shall be submitted, at the request of any concerned Party, to arbitration in accordance with the provisions of the Annex to this Convention.

Annex

ARBITRATION

1. A request for arbitration shall be made to the Secretary-General of the United Nations. The other Party or Parties involved in the dispute shall be notified of this request. Following such a request, an arbitral tribunal shall be constituted by the Secretary-General to decide on the dispute.

2. The tribunal shall be composed of three members. Parties concerned shall, within ten days of the date on which the request is transmitted pursuant to paragraph 1, each appoint one member of the tribunal. In the event that more than two Parties are involved in the dispute, the Parties sharing similar views on the questions to be considered shall seek to agree on the appointment of a common member of the tribunal.

3. If the members of the tribunal are not appointed pursuant to paragraph 2 within the ten-day period it specifies, the Secretary-General shall, within ten days, appoint them.

4. The two members thus appointed shall then select a third member, who shall be the Chair. In the event the two members are unable within ten days of the appointment of the second member to appoint the third, the Secretary-General shall, within ten days of the end of the latter period, appoint the third member of the tribunal, who shall not be a national of any of the Parties involved in the dispute.

5. Within ten days of the formation of the tribunal, the Parties concerned shall file with the tribunal a memorandum, copies of which shall be transmitted to all Parties concerned.

6. An oral hearing shall be convened at a place and on a date to be determined by the tribunal, within thirty days following the formation of the tribunal.

7. Decisions of the tribunal shall be final and binding. They shall be taken by a majority of the members of the tribunal.

8. The tribunal shall communicate its decision to all Parties concerned within thirty days of the end of the oral hearing. Reasons in writing shall be communicated to the Parties concerned within sixty days of the decision.

9. Once a dispute has been duly submitted to the tribunal, the tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the Parties concerned or to prevent damage to the stocks in question, pending a final decision.

10. The tribunal shall adopt such rules of procedure as it deems necessary.

EXPLANATORY NOTE

This draft Convention draws on various sources, including the United Nations Convention on the Law of the Sea, other international agreements, Agenda 21, the draft FAO Flagging Agreement and EC Regulations, as indicated below:

Article	Source
1 (a)	Cf. definition of "international conservation and management measures" in the Draft Agreement on the Flagging of Vessels Fishing on the High Seas to Promote Compliance With Internationally Agreed Conservation and Management Measures, FAO document CL 103/LIM/6, June 1993 (the Draft FAO Flagging Agreement)
1 (g)	Cf. article 218 of the United Nations Convention on the Law of the Sea (UNCLOS)
1 (l)	Cf. article 63 (2) of UNCLOS
4 (a) (i)	Cf. article 119 (1) (a) of UNCLOS
4 (a) (ii)	Cf. article 119 (1) (b) of UNCLOS
4 (b) (i)	Cf. UNCLOS article 119 (2); EC regulation 3760, article 16; article VI, paras. (1) (b) and (3) of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries
4 (b) (iii)	Cf. EC regulation 3927, articles 4 (1) and 5 (2); Northwest Atlantic Fisheries Organization (NAFO) Measures, Part II, B, schedules IV and V
4 (b) (iv)	Cf. EC regulation 3927, article 4 (2); Agenda 21, para. 17.46 (c); cf. NAFO Measures, Part II, A, C and Schedule VI
4 (b) (v)	Cf. EC regulation 3927, article 4 (3); Agenda 21, paras. 17.46 (c) and 17.50; cf. NAFO Measures, Part I 4 (a)
4 (b) (vii)	Cf. EC regulation 3760, article 12 (1); and NAFO measures, Part IV 1 (i)
5	Inspired by: Bergen Ministerial Declaration (article 7): Bergen Ministerial Declaration on Sustainable Development in the ECE Region, adopted at the Regional Conference on Action for a Common Future organized by the Government of Norway in cooperation with the United Nations Economic Commission for Europe (ECE) held at Bergen, Norway, from 14 to 16 May 1990. Ministers from 34 countries in the ECE region and the Commissioner for the

Environment of the European Community attended the Bergen Conference;

Rio Declaration on Environment and Development (principle 15) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

United Nations Framework Convention on Climate Change (article 3, para. 3) adopted at the United Nations Conference on Environment and Development held at Rio de Janeiro, on 14 June 1992;

Convention on Biological Diversity (preamble), adopted at the United Nations Conference on Environment and Development, held at Rio de Janeiro, on 14 June 1992;

Treaty on European Union (article 103r, para. 2) signed at Maastricht, Netherlands, on 7 February 1992.

6 Cf. draft FAO Flagging Agreement, article III (8)

6 (c) Cf. Agenda 21, para. 17.56 (b)

6 (d) Cf. Agenda 21, para. 17.56 (d)

7 (a) Cf. draft FAO Flagging Agreement, article III (7); NAFO Measures, Part III A also refer

7 (e) Cf. EC regulation 3928/92 and NAFO Measures, Part VI

7 (j) Cf. EC regulation 3760/92, article 4 (2) (d) and (e)

8 Cf. EC regulation 3760/92, article 5, and draft FAO Flagging Agreement, article III, paras. (2) and (4)

9 (d) Cf. draft FAO Flagging Agreement, article III (9)

10 Cf. Report of the 103rd Session of the FAO Council, Rome, 14-25 June 1993, paras. 63-72

11 Cf. Memorandum of Understanding on Port State Control, Paris, 20 January 1982, section 3.1; for port State enforcement in the context on pollution, article 218 of UNCLOS refers

12 Cf. draft FAO Flagging Agreement, article VI (3)

13 Cf. article V of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, in force 16 February 1993. Parties are Canada, Japan, Russian Federation and the United States

14 Cf. article 92 of UNCLOS

20 Paragraph 17.59 of Agenda 21 and article 118 of UNCLOS refer

22 Paragraph 17.48 of Agenda 21

23 Cf. draft FAO Flagging Agreement, article VIII

24 Cf. draft FAO Flagging Agreement, article IX

25 Cf. Part XV of UNCLOS; article 33 of the Statute of the International Court of Justice refers

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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

ORGANIZATION OF WORK

List of issues

(Submitted by the delegation of Cuba)

1. Identification of straddling species and highly migratory species the fishing of which requires consideration by the Conference.

2. Identification of the principal ocean areas where such species are found.

3. General obligations of States under the provisions of the United Nations Convention on the Law of the Sea and other related instruments.

4. Collection of scientific, technological and statistical data on fisheries resources, ecological factors, fishing fleets, fishing methods and other related issues.

5. Measures concerning conservation and rational management of fisheries resources (total allowable catch, quotas, seasons open and closed to fishing, fishing gear, etc.).

6. Registration of fishing vessels.

7. Reflagging of fishing vessels.

8. Monitoring and control mechanisms.

9. Assistance to developing countries.

10. Settlement of disputes.

11. Penalties.

12. Other matters (access to States which have not been engaged in high seas fishing).

13. Desirability of the elaboration and future adoption of legally binding rules or an international legal instrument on responsible fishing.

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New York, 12-30 July 1993

LETTER DATED 16 JULY 1993 FROM THE CHAIRMAN OF THE DELEGATION OF CANADA TO THE CONFERENCE ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

The attached document, formally submitted today for circulation separately as an "L" document, is presented by Canada and on behalf of the delegations of Argentina, Chile, Iceland and New Zealand. The document casts, in the form of a convention, the proposals which were set out in the Annex to the Canadian delegation's letter of 25 May 1993 (A/CONF.164/L.5) which have been subsequently revised with our co-sponsors in the light of comments received in informal consultations.

I would be grateful if this letter was also circulated as an "L" document.

(Signed) A. R. A. GHERSON
Chairman of the delegation of Canada
to the Conference

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